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mate cause of the accident, thus bringing it within the rule that plaintiff may recover, although careless himself, if the defendant might, by the exercise of care on his part, have avoided the consequences of plaintiff's carelessness. *Cooley on Torts*, p. 812; *R. R.* v. *Ives*, 144 U. S. 429.

Where the facts are undisputed, and it appears that failure to "look and listen" proximately contributed to an injury which would otherwise have been avoided, such failure should be held contributory negligence, as a matter of law. *Schofield* v. *R. R.*, 114 U. S. 615; *Tully* v. *Fitchburg R. R.*, 134 Mass. 499; *Tolman* v. *R. R.*, 98 N. Y. 198; otherwise the question of failure to use ordinary care should be left to the jury. *Hanks* v. *Boston, etc., R. R.*, 147 Mass. 495; *Blaizer* v. *N. Y., etc., R. R.*, 110 N. Y. 638; *Wilson* v. *P. R. R.*, 132 Pa. St. 27.

TAXATION—PERSONALTY—MISSOURI, K. & T. RY. CO. v. BOARD OF COMMISSIONERS OF LABETTE COUNTY ET AL., 59 Pac. 383 (Kan.).—*Held*, under paragraph 6873 Gen. St., 1889, that the roadbed, track and right of way of a railway is personal property, and not real property, and as such, the tax thereon is a personal tax.

The correctness of this decision is unquestionable, as it is in accord with the statute. However, it is of interest to note that the statute negatives the common law rule which considers the roadbed, track and right of way as realty, a rule which has been uniformly followed in the decisions of the courts. That the legislature has power to say that such property shall be considered personalty must be recognized, since it has the power to treat the rolling stock of a railroad as realty for the purpose of taxation. *Louisville Ry. Co.* v. *State*, 25 Ind. 177. Although the better authorities treat it as personalty. *Amer. and Eng. Ency. of Law*, Vol. 19, page 883. The Kansas statute, as far as we are able to learn, is without a parallel.

TELEGRAPH COMPANIES—STOCK EXCHANGE NEWS—MARKET QUOTATIONS—PUBLIC RIGHTS—IN RE RENVILLE ET AL., 61 N. Y. Sup. 549.—A telegraph company contracted with the New York Stock Exchange, a voluntary association, to transmit stock-market reports to such persons as the exchange should designate, and to refuse to transmit such information to persons whom it might designate; the telegraph company paying the exchange for the news, and charging the persons so furnished therefor. Petitioner had been furnished such news by the telegraph company prior to the contract, when the company, under order of the exchange, refused him further service, although it had been paid therefor in advance. *Held*, that the petitioner could not compel the telegraph company to furnish him with such news; that information as to transactions on a stock exchange, which is a voluntary association, whose facilities are limited to its members, is not property clothed with a public interest, so as to entitle persons not members to compel the furnishing of such information against the wishes of the association.

The correctness of this decision is unquestioned. It is based on sound legal principles, and is supported by authority. Cf. *Telegram Co.* v. *Smith*, 47 Hun. 505; *Wilson* v. *Telegram Co.*, 3 N. Y. Sup. 633. A different conclusion was reached in the case of *New York & Chicago Grain & Stock Exchange* v. *Board of Trade of City of Chicago*, 127 Ill. 153, 19 N. E. 855, 2 L. R. A. 411. The basis of that decision was that as the board had created a standard market in agricultural products, and built up a great system for the communication of market fluctuations, upon which the public relied, it could not be allowed to furnish them to some and refuse them to others. If it gave information to one, said the Illinois court, it had to give the same information to all, and the court could compel it to give such information. It would seem clear that the court has no such power. No franchise has

been conferred upon this voluntary association by the public which justifies an interference by the public with its method of conducting business. The doctrine of *Munn* v. *Illinois*, 94 U. S. 113, does not apply. That case decided that the legislature could regulate the rate of charge for services rendered in a public employment, or for use of property in which the public had an interest. In the present case no property of the Stock Exchange had been devoted to public use, and the public had no legal interest in that property.

TOWN OFFICERS—AUTHORITY TO WAIVE STATUTE OF LIMITATIONS—MCGARY V. CITY OF N. Y., 61 N. Y. Sup. 689.—A town board has no authority to revive a claim against the town after it has been barred by the Statute of Limitations. The town board is in a sense a trustee, and as such is bound to protect the inhabitants of the town against outlawed or other uncollectible demands. They are in the same position as executors, who cannot waive the Statute of Limitations after it has once attached. *Butler* v. *Johnson*, 111 N. Y. 204; *Schutz* v. *Morette*, 146 N. Y. 137.

WRIT OF RESTITUTION—EXPIRATION OF LEASE—STATE EX REL. V. ORTH & BENSON, JUDGE, 59 Pac. 501 (Wash.).—At the time of entry of judgment directing issuance of a writ of restitution, defendant's lease had expired. *Held*, that under contract pleaded by defendant that he was no longer entitled to possession is not ground for refusing to fix the supersedeas bond staying issuance of writ, as 2 Ballingers Ann. St., § 5546, authorizes either party aggrieved by such a judgment to appeal, as in other civil actions. Fullerton, J., and Dunbar, J., dissenting.

Substantially the contention made by the respondent is that no real contention arises upon the appeal, that, the lease having expired, the subject-matter of the contest has ceased to exist. This position is held by the dissenting judges, who rely, as the respondent, upon *Hice* v. *Orr*, 16 Wash. 163. The court, however, held that a mandamus should issue, as it could not inspect the record of the trial to determine the merits of the case, and that as the pleadings disclosed a controvers, the appeal should be allowed as provided by statute.